



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MACHAKOS**

**ADOPTION CAUSE NO. 14 OF 2017**

**IN THE MATTER OF BABY DP**

**ON APPLICATION FOR AN ADOPTION ORDER**

**IN THE MATTER OF AN APPLICATION FOR ADOPTION BY:**

**JWM AND IMW (APPLICANTS)**

**RULING**

1. The adoption order was sought vide originating Summons under Sections 154, 156, 157, 158, 160, 162 and 163 of the Children Act No. 8 of 2001 and is dated 15th August, 2017. The Applicants **JWM and IMW** through their advocates J.A. Makau & Co Advocates seek the following orders:

1. **THAT** the requirements of Section 158(4) (a) of the Children's Act be waived as provided for by Section 159(I) of the Act.
2. **THAT** DWR in the said Republic be appointed Guardian ad Litem in this case.
3. **THAT** the Applicants be authorized to adopt baby DP and the baby be known as DMW.
4. **THAT** WMW be appointed Legal Guardian of the child.
5. **THAT** the Director of Children's Department to investigate the case and file a report.
6. **THAT** it is directed that the Registrar-General shall make in the adopted Children's Register an entry recording the adoption in accordance with the particulars set out in the Schedule attached hereto.

2. In the preliminary stage, prayer 1, 2 and 5 were granted by the court.

3. According to a report filed in court by Change Trust, the minor was estimated to be born in November, 2014 and who was found abandoned at Kwa Nganga Estate in Kawangware on 6<sup>th</sup> August, 2015 and rescued by two good Samaritans MM and GW. The report states that the abandonment was booked at Muthangari Police Station vide OB 31/6/08/2015 and the minor was admitted at House of Charity Home on 6<sup>th</sup> August, 2015. According to the report, on 23<sup>rd</sup> March, 2016 the minor was committed to the care and protection of the house of charity home through the Nairobi Children's Court Protection and Care Case 55 of 2016 having been confirmed by the Muthangari Police Station on 17<sup>th</sup> March, 2016 that the child had not been claimed by anyone.

4. On 10<sup>th</sup> June, 2016, the minor was declared free for adoption by the Change Trust Case Committee Sitting on even date vide certificate number xxxxxxxx issued on the same day and was placed in the care of the applicants for mandatory bonding.

5. According to the applicants' affidavit dated 15<sup>th</sup> August, 2017, they are residents of [particulars withheld] Location and J is a farmer while I is a housewife. The applicants are Kenyan citizens married to each other since 15.9.2016 under the Marriage Act and the infant was received under their joint care and possession on 29<sup>th</sup> September, 2016. It was their evidence that they have fostered the minor since then and the House of Charity Children's Home where the minor was housed previously had no objection to this application and further that WMW consented to be legal guardian of the minor and they had never received payment or reward in consideration for the application.

6. **WMW** swore an affidavit dated 15<sup>th</sup> August, 2017 to confirm consent to act as Legal Guardian and **DWR** vide affidavit dated 15<sup>th</sup> August, 2017 gave consent to act as guardian ad litem of the minor.

7. On 11<sup>th</sup> April, 2018 this Court directed the Director of Children Services to conduct investigations as to the suitability of the Applicant to adopt **BABY DP** and submit a report and findings to Court.

8. Emily Kimanzi is the Sub-County Children's Officer, Machakos. She conducted a social Inquiry on the Applicants by interrogating them and the minor on an unknown date. It was observed that applicants are husband and wife and have been residing with the minor and the minor seemed to have bonded well with the applicants and is well provided for in terms of clothing and other amenities. The applicants have four biological children whom the first applicant sired with his former wife Hannah Nzilani and later separated with her and married the second applicant and they solemnized their marriage vide certificate 218054. The applicants reside in their rural home and have built a 3 bedroom house that is well furnished and clean with electricity and water. The applicants felt that they are in a position to take care of **BABY DP** thus were willing to take on the responsibility. Her conclusion is that the applicants are well suited to adopt **BABY DP**. On 19<sup>th</sup> February, 2019, Emily Kimanzi, the Sub-County Children's Officer, Machakos filed a favourable report dated 28.1.2019 as to the suitability of the Applicants to adopt to **BABY DP**.

9. On 18<sup>th</sup> June, 2019, an amended originating summons was filed whereupon it was sought that **BMM** be appointed the legal guardian of the minor in place of **WMW** and who deponed an affidavit on 18<sup>th</sup> June, 2019 indicating his willingness to act as legal guardian.

**10. Emily Kimanzi** appeared before me on 25.4.2019 to recommended applicants' application and sought to have the report dated 28.1.2018 in respect of a home visit that she undertook confirming the suitability of the applicant to be adopted in the instant proceedings.

11. On 25.4.2019, Miss Aveline Karugu appeared in court to recommend the applicants' application and to confirm the suitability of the applicants to adopt the minor as well as adopt the report dated 10.6.2016. **BMM** appeared before me on 19.6.2019 to confirm and rely on the contents of his affidavits and willingness to take up his duties as well as recommend the applicant to adopt **BABY DP**. The applicants also appeared before me on 25.4.2019 and relied on their affidavits to support the application and indicated willingness to adopt and cater for the needs of the minor.

12. This court is satisfied that the Applicants are suitable persons to adopt **BABY DP** and that they are financially stable and have the means to provide and care for him. I also find that it is in the best interests of the child to allow the application. The minor has bonded well with the applicants and it is fair and appropriate to allow the application.

13. In the result the applicants application dated 15.8.2017 is allowed in the following terms;

**1. THAT the Applicants be and are hereby authorized to adopt **BABY DP** and the baby be known as **DMW**.**

**2. THAT **BMM** be and is hereby appointed **Legal Guardian of the minor**.**

**3. THAT the Registrar-General do make in the Adopted Children Register an entry recording the adoption in accordance with the particulars set out in the Schedule to this order.**

**4. THAT the Guardian Ad Litem is hereby discharged.**

It is so ordered.

**Dated and delivered at Machakos this 23<sup>rd</sup> day of October, 2019.**

**D. K. Kemei**

**Judge**